IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

OP.No. 33856 of 2000(E)

PETITIONER:

K.GANGADHARAN, S/O. APPUKUTTY,
LICENSEE ARD NO.125, CHAALIYAD P.O.,
MALAPATTAM, TALIPARAMBA TALUK.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS:
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1. LABOUR COURT, KANNUR.

2. K. P. SADANANDAN, S/O. KUNHIRAMAN,
SALESMAN, ARD NO.125, CHAALIYAD P.O.,
MALAPATTAM TALIPARAMBA TALUK.

BY GOVERNMENT PLEADER SMT.M.R.SREELATHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.33856/2000

ORDER ON CMP. 57844/2000 IN OP. NO.33856/2000

DISMISSED

29.11.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE AWARD PASSED BY THE 2ND RESPONDENT TO THE PETITIONER.

/TRUE COPY/

P.A. TO JUDGE

tss

S.SIRI JAGAN,J

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O.P.No.33856 of 2000

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Dated this the 29th day of November, 2007

JUDGMENT

The management in I.D.No.27/1997 before the Labour Court, Kannur is the petitioner herein who challenges Ext.P1 award of the Labour Court in that I.D. The issues referred for adjudication were:

> "(1)whether there is denial of employment to Sri.K.P.Sadanandan, Sales man of ARD No.125, Chaliyad, Malappattam by the management?
> (2) If so, to what relief he is entitled?"

2. The contention raised by the management before the Labour Court was that the workman involved was not a workman as defined under Section 2(s) of the Industrial Disputes Act and there was no employer-employee relationship between them. According to the petitioner, the workman was only helping the petitioner in the running of the ration shop, which was the establishment of the management. The workman examined himself and two witnesses to prove the employment. He further sought production of documents by the petitioner-management. However, the management did not produce the

documents stating that those documents are not available as the same have been destroyed. The petitioner examined himself as a witness to disprove the case of the workman after weighing the evidence on both sides, the Labour Court came to the conclusion that evidence adduced by the workman is believable and accordingly held that the workman was denied employment unjustly. On that finding the Labour Court directed reinstatement of the workman with continuity of service and back wages. That award is under challenged in this writ petition. The only ground on which the petitioner is challenging the award is that there evidence adduced by the workman was not sufficient to prove the case of the workman. According to him the evidence of the workman is not believable.

3. I have considered the rival contentions in detail. It is settled law that the jurisdiction of this Court in the matter of interfering with awards of Labour Courts and Industrial Tribunals in Industrial Disputes is very limited, especially in the matter of appreciation of evidence. Supreme Court and this Court has consistently taken view that this Court cannot re-appreciate evidence and come to a different conclusion than what has been arrived at by the Tribunal or Labour Court unless the conclusion is demonstrably perverse. The fact that another

man considering the very same evidence would come to a different conclusion is no ground for interference.

In this case a reading of the award would show that the Labour court had carefully weighed the evidence of both sides and has given very cogent reasons for arriving at the conclusion that the workman was actually employed by the petitioner and the petitioner denied employment to the workman. Despite the persuasive arguments of the counsel for the petitioner, I could not find any perversity in the findings. In fact, the evidence of the workman's witnesses would prove that they had seen him working in the ration shop. The failure on the part of the petitioner to produce the summoned documents was also rightly held against the petitioner. As such, I do not find any perversity in the findings entered by the Labour Court. The result of the above discussion is that the petitioner has not succeeded in showing any infirmity in the impugned award. Accordingly, the Original petition is dismissed

S.SIRI JAGAN, JUDGE

dvs